

LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

ENTERED
Office of Proceedings

MAY 17 2011

Part of
Public Record

FEE RECEIVED

MAY 16 2011

**SURFACE
TRANSPORTATION BOARD**

BY HAND

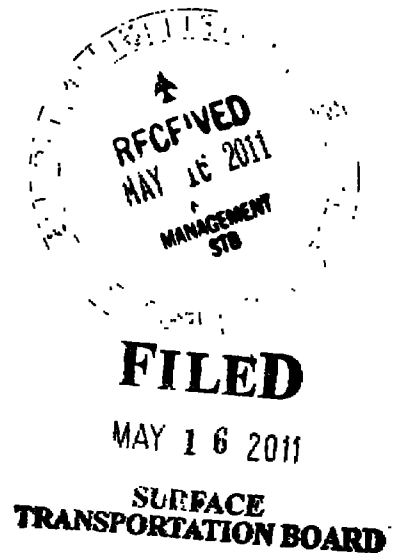
May 16, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 F Street, S.W.
Washington, D.C. 20324-0001

ENTERED
Office of Proceedings

MAY 17 2011

Part of
Public Record



RE: FD 35499, San Luis & Rio Grande Railroad--Continuance-in-Control
Exemption--Saratoga And North Creek Railway, LLC

229579

FD 35500, - Saratoga And North Creek Railway, LLC-- Acquisition
And Operation Exemption- Delaware And Hudson Railway Company,
Inc. d/b/a Canadian Pacific

FD 35500, Sub-No. 1- Saratoga And North Creek Railway, LLC--
Operation Exemption--Warren County, NY

Dear Ms. Brown:

On behalf of applicants, San Luis & Rio Grande Railroad and Saratoga And North Creek Railway, LLC, I am submitting the following three exemption notice:

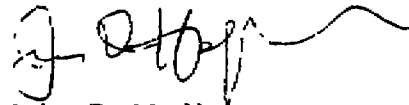
- (1) FD 35499, a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) for San Luis & Rio Grande Railroad to continue in control of Saratoga And North Creek Railway, LLC;

(2) in FD 35500, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to acquire and operate a permanent and exclusive freight easement: and

(3) in FD 35500, Sub-no. 1, a verified notice of pursuant to 49 CFR 1150.31 for Saratoga And North Creek Railway, LLC to operate a line of railroad.

I am including with these filings a copy of each document on a computer diskette as well as two checks totaling \$3200 to cover the requisite filing fees. Because the filing fee for one carrier to control another carrier is slightly higher than that originally anticipated I am including my own check for the additional \$100.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Heffner', with a long, horizontal, wavy flourish extending to the right.

John D. Heffner

Enclosures

cc: Mr. Edwin Ellis

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35499

**SAN LUIS & RIO GRANDE RAILROAD
-- CONTINUANCE IN CONTROL EXEMPTION
SARATOGA AND NORTH CREEK RAILWAY, LLC**

**RECEIVED
MAY 16 2011
MANAGEMENT
STB**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

FEE RECEIVED

MAY 13 2011

**SURFACE
TRANSPORTATION BOARD**

229519

FILED

MAY 16 2011

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

MAY 17 2011

**Part of
Public Record**

Submitted By:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3333

Counsel for Petitioner

Dated: May 16, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35499

**SAN LUIS & RIO GRANDE RAILROAD
-- CONTINUANCE IN CONTROL EXEMPTION --
SARATOGA AND NORTH CREEK RAILWAY, LLC**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

Comes now the San Luis & Rio Grande Railroad ("SLRG") and states
as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules (49 C.F.R. § 1180), SLRG hereby gives notice of a transaction which qualifies for exemption under Section 1180.2(d) (2) of those rules.

2. As relevant here, SLRG is an existing class III short line railroad common carrier and a subsidiary of Permian Basin Railways, a noncarrier short line railroad holding company.¹

3. Saratoga and North Creek Railway, LLC ("Saratoga") has recently

¹ Permian is a subsidiary of Iowa Pacific Holdings, LLC, a noncarrier short line holding company not subject to the jurisdiction of the Board.

been established as a wholly-owned subsidiary of SLRG for the purpose of operating a short line railroad over two contiguous lines of railroad formerly owned by the Delaware & Hudson Railway, Inc., D/B/A Canadian Pacific ("CP") and now owned by the Town of Corinth, NY, and Warren County, NY, respectively.² SLRG's existing lines are located within the State of Colorado and Saratoga's proposed operation is located within the State of New York, some 2,000 miles distant. There is no plan to connect them.

4. Currently Permian owns 100% of the stock of six existing class III short line rail carriers including SLRG, West Texas and Lubbock Railway Company, Inc., the Austin & Northwestern Railroad Company, Inc. d/b/a Texas-New Mexico Railroad, Arizona Eastern Railway Company, Inc., the Chicago Terminal Railroad, and the Mount Hood Railroad.³ The lines of these railroads do not connect and there is no plan to connect them or to make a connection with Saratoga.

5. Saratoga is presently negotiating a series of agreements with CP, the Town of Corinth, NY ("the Town"), and Warren County, NY ("the County"), for

² The segment owned by the Town of Corinth extends from MP 39.44 at Saratoga Springs, NY, to MP 55.89 at or near Corinth, NY. CP has retained a permanent exclusive freight easement over the segment. The segment owned by Warren County, NY, extends from that point to MP 94.96 at North Creek, NY, and was acquired by Warren County after it was abandoned by CP.

³ Copies of STB decisions authorizing these transactions are attached hereto as Exhibit A.

operation of the subject rail lines. CP will transfer to Saratoga the exclusive, permanent railroad operating easement and common carrier obligation it retained several years ago in selling the right of way of the Saratoga Springs-Corinth line to the Town in a *State of Maine* transaction.⁴ Saratoga is currently negotiating a license agreement with the Town for the use of the rail assets owned by the Town. Similarly, Saratoga is negotiating a license agreement with the County for the use of the County-owned rail assets. The parties expect to execute agreements shortly.

6. Under section 1180.2(d)(2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, section 1180.2(d)(2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the acquisition is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a class I carrier.

⁴ Under that arrangement the Town had purchased the physical rail assets from CP in 2005 but CP retained a permanent and exclusive easement for freight railroad purposes and associated common carrier rights and obligations in a *State of Maine* transaction. *See, The Town of Corinth, NY-Acquisition and Operation Exemption*, FD 34803, STB served March 9, 2006 and *Maine, DOF Acq. Exemption, ME, Central R. Co.*, 8 I.C.C.2d 835, 836-37 (1991) (*State of Maine*).

7. In order to claim the section 1180.2(d)(2) exemption, section 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in sections 1180.6(a)(1)(i) – (iii), 1180.6(5) – (6), and 1180.6(a)(7)(ii) of those rules. That information is provided as follows:

Summary of Proposed Transaction: **49 CFR § 1180.6(a)(1)(i)**

SLRG will acquire the entire ownership interest in Saratoga. As noted above, Saratoga is a newly established limited liability company and noncarrier organized by SLRG's corporate parent Permian. Saratoga will acquire the exclusive, permanent railroad operating easement and common carrier obligation that CP retained when it sold the track and underlying right of way between Saratoga Springs and Corinth to the Town. Saratoga will resume and provide all common carrier freight service over that easement on the line of railroad owned by the Town. Saratoga will also be acquiring operating authority to resume common carrier freight service over the abandoned (but not salvaged) line of railroad owned by the County .

Applicant's name, address, and telephone number:

San Luis & Rio Grande Railroad
c/o Permian Basin Railways, Inc.
P.O. Box 618181
Chicago, IL 60661
312-466-0900

Legal counsel to whom questions should be addressed:

John D. Heffner
John D. Heffner, PLLC
1750 K Street, NW
Suite 200
Washington, D.C. 20006
(202) 296-3334

Schedule for consummation: **49 CFR §1180.6(a)(1)(ii)**

The parties intend to consummate the proposed transaction at least 30 days from the date of this notice, probably about late June or early July 2011.

Purpose to be accomplished by the transaction: **49 CFR §1180.6(a)(1)(iii)**

The purpose of this transaction is for Saratoga to replace the previous operator⁵ that had been providing excursion passenger service but no freight service over the two segments of rail lines owned by the County and the Town. Saratoga will resume the excursion service and reinstate the common carrier freight service that has not been offered since November 2003 on the Town's segment and since 1994 on the County's segment. Saratoga believes that it can provide freight service more economically than a class I railroad can. It plans to work closely with the local community and CP to develop the freight potential of these lines.

⁵ Saratoga understands that service terminated as of December 31, 2010 when that operator's agreement expired..

State(s) in which the property of each carrier is situated: **49 CFR**

§1180.6(a)(5)

Saratoga will be located in the State of New York. SLRG is located in Colorado. Permian's other five American subsidiaries are located in the States of Arizona, Illinois, New Mexico, Oregon, and Texas. Saratoga's track is located hundreds of miles from Permian's nearest subsidiary (Chicago Terminal Railroad in Chicago), about 2,000 miles from the SLRG, and 1500-3000 miles from Permian's other subsidiaries.

Map: **49 CFR § 1180.6(a)(6)**

Attached hereto as Exhibit B.

Copy of Agreement: **49 CFR § 1180.6(a)(7)(ii)**

N.A. There is no agreement covering SLRG's control of Saratoga.

Related transaction

Concurrently with this filing, Saratoga is submitting two other verified notices of exemption: (1) FD 35500, Saratoga and North Creek Railway, LLC-Acquisition And Operation Exemption-Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific covers Saratoga's acquisition and operation of CP's retained easement and common carrier rights and obligations on the Town's segment and (2) FD 35500, Sub-no. 1. Saratoga and North Creek Railway, LLC-

Operation Exemption-Warren County, covers Saratoga's resumption of operations over the County-owned segment.

Other information / Certification:

Permian hereby certifies that (1) the lines of the rail carrier to be acquired pursuant to this notice of exemption do not connect with those of SLRG or Permian's other existing short line subsidiaries, (2) the subject acquisition proceeding is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (3) the transaction does not involve a class I carrier.

Environmental and historical considerations:

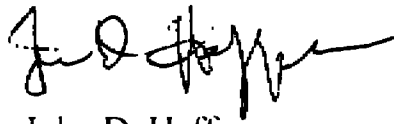
This continuance in control proceeding is exempt from environmental review under 49 CFR 1105.6(c)(2)(i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old. Accordingly, no historic report is required.

Labor Protection to be Imposed

No labor protection applies on transactions involving only class III railroads.
See, 49 U.S.C. 11326(c).

Respectfully submitted,

San Luis & Rio Grande Railroad

A handwritten signature in black ink, appearing to read "John D. Heffner", written in a cursive style.

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, D.C. 20006
(202) 296-3334

Dated: May 16, 2011

EXHIBIT A

36573

SERVICE DATE – JANUARY 12, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34799]

Permian Basin Railways, Inc.- Acquisition of Control Exemption—San Luis & Rio Grande Railroad Company, Inc.

Permian Basin Railways, Inc. (Permian), a noncarrier,¹ has filed a verified notice of exemption to acquire control of Class III carrier San Luis & Rio Grande Railroad Company, Inc. (SLRG).² SLRG is currently owned by RailAmerica Transportation Corp. (RTC), a short line railroad holding company, indirectly controlled by RailAmerica, Inc.³

The transaction was expected to be consummated on or after December 22, 2005.

Permian owns the stock of three existing Class III short line railroads: West Texas and Lubbock Railway Company, Inc., the Austin & Northwestern Railroad Company, Inc. d/b/a Texas New Mexico Railroad, and the Arizona Eastern Railway Company, Inc.

¹ A redacted version of the executed purchase and sale agreement and all supporting documents was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. A protective order was served on December 23, 2005.

² RTC and RailAmerica formed SLRG in 2003 for the purpose of acquiring the subject rail lines from the Union Pacific Railroad Company. The Board authorized SLRG's acquisition of the subject lines and RTC's and RailAmerica's control of SLRG in STB Finance Docket Nos. 34350 and 34352, respectively.

Permian states that: (1) the railroads do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(e), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34799, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on John D. Heffner, 1920 N Street, N.W., Suite 800, Washington, DC 20036,

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: January 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

38612

SERVICE DATE - DECEMBER 19, 2007

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35108]

Permian Basin Railways, Inc. — Acquisition of Control Exemption — Mount Hood
Railroad

Permian Basin Railways, Inc. (PBR) has filed a verified notice of exemption to permit PBR to acquire control of the Mount Hood Railroad (MHR) by purchasing 100% of the outstanding stock of MHR.¹

PBR is a noncarrier holding company, and a wholly owned subsidiary of Iowa Pacific Holdings, also a noncarrier. PBR owns the following Class III rail carriers: Texas-New Mexico Railroad, West Texas & Lubbock Railway, Arizona Eastern Railway, San Luis & Rio Grande Railroad, and the Chicago Terminal Railway.

The transaction is scheduled to be consummated on or about December 31, 2007, but consummation can lawfully occur no earlier than January 2, 2008, the effective date of the exemption (30 days after the exemption was filed).

Applicant states that: (i) the rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by PBR; (ii) this transaction is not part of a series of anticipated transactions that would connect any of these rail lines with each other or any railroad in their corporate family; and (iii) this transaction does not

involve a Class I carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(e), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 26, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35108, must be filed with the Surface Transportation Board, 395 E. Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, N.W., Suite 350, Washington, DC 20006.

¹ A copy of a draft Agreement for Sale of Stock, as required by 49 CFR 1180.6(a)(7)(ii), was filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

Board decisions and notices are available on our website at

WWW.STB.DC.GOV

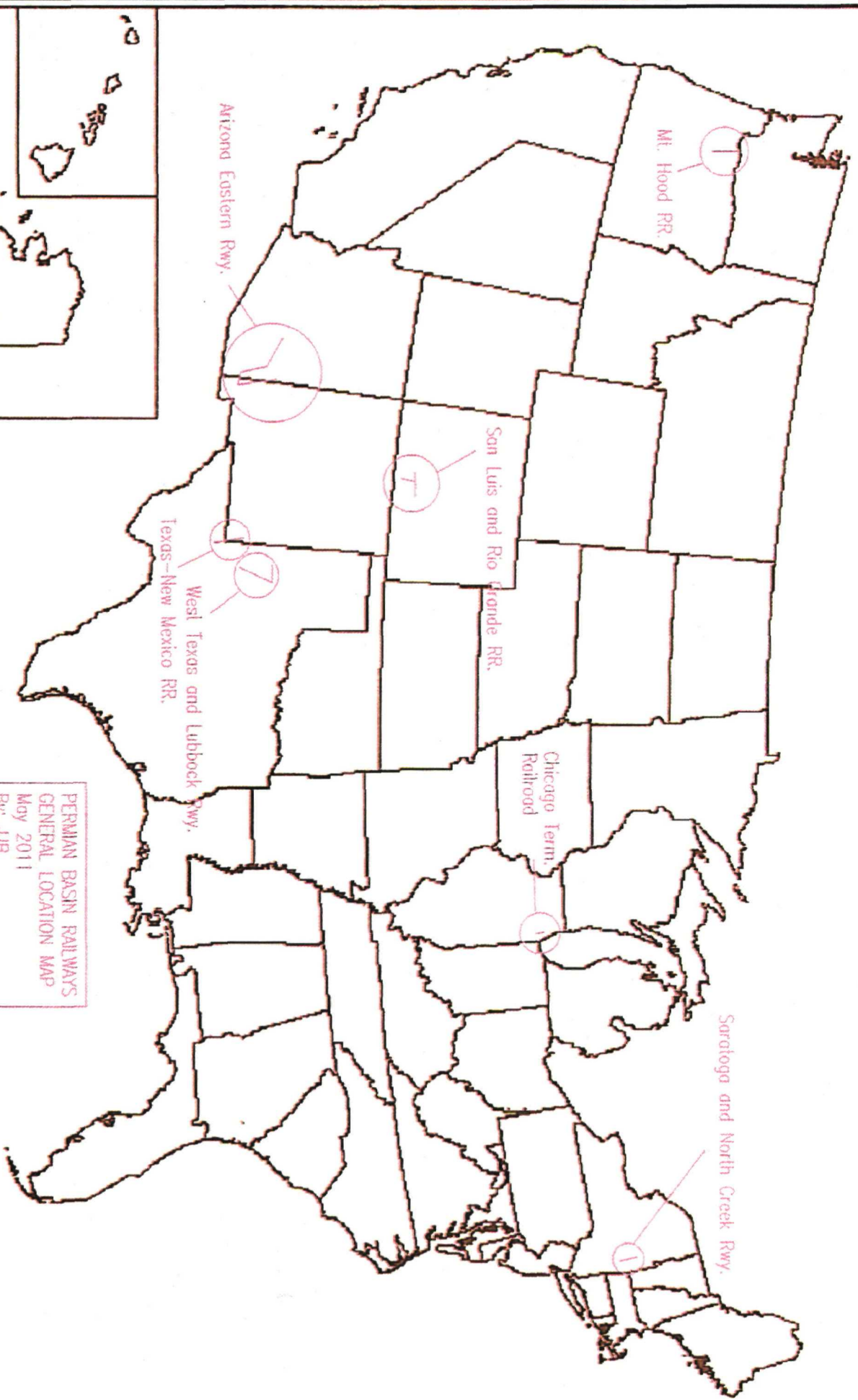
Decided: December 12, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

EXHIBIT B



PERMAN BASIN RAILWAYS
GENERAL LOCATION MAP
May 2011
By: JJB
No Scale

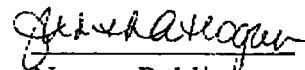
VERIFICATION

STATE OF Illinois)
)
CITY OF Chicago) ss

Edwin E. Ellis, being duly sworn according to law, hereby deposes and states that (s)he is holds the position of President with petitioner, is authorized to make this Verification, has read the foregoing document, and knows the facts asserted therein are true an accurate as stated, to the best of (her) his knowledge, information, and belief.



Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois, this 28 day of April, 2011.


Notary Public

My commission expires: Jan 13, 2013

